**IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.**

**No. 10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING.**

[ Chapter VIII, Rule 32(2) (b)]

**Criminal Appeal No. 1823/2001**

Shekhar Chandra … Appellant.

Vs.

State .. Respondent.

Decided on 25-08-2005

A.F.R. ( Approved for Reporting)
~~Not Approved for Reporting~~

**( Irshad Hussain, J.)**

**( B.S.Verma, J.)**

Dated: 25-08-2005.

**In the High Court of Uttaranchal, at Nainital.**

Criminal Appeal No. 1823/2001

Shekhar Chandra S/o Keshav Datt Padalia
R/o Village Richi, Patti Talla Kosiyan,
Tehsil Betalghat, District Nainital .. Appellant.

Vs.

State of Uttaranchal …. Respondent.

Sri M.S. Pal, learned Senior Advocate, Amicus Curiae,
for the accused.
Sri Amit Bhatt, learned A.G.A for the State.

**Coram: Hon'ble Irshad Hussain, J.**
**Hon'ble B.S. Verma, J.**

**Dated: 25-08-2005**

**Per: Hon'ble Irshad Hussain, J.)**

Accused Shekhar Chandra preferred this criminal appeal against the judgment dated 6.10.2001, passed by the then Incharge Sessions Judge, Nainital in Sessions Trial No. 102/2000, convicting and sentencing him to imprisonment for life and fine of Rs. 10,000/- and in default of payment of fine to suffer further Rigorous Imprisonment for one year under Section 302 Indian Penal Code.

2- Breifly stated the facts of the prosecution case are as under:

On 21-8-1999 at about 2.00 P.M. Ravindra, a thirteen years old son of the accused was grazing cows along with his elder brother Naveen Chandra ( P.W.3) near Richi Primary School within the circle of Police Station Bhatrojkhan, District, Almora. Another boy Keshav Dutt ( P.W.8) aged about fifteen years was also there with them. Smt. Deepa Devi (P.W.2), the wife of the accused while collecting the grass from the field in that vicinity. Accused carrying an iron axe came there and started giving its blows on the head of his son Ravindra resulting which the boy sustained injuries and started crying. His brother, mother and another boy who were there in that vicinity rushed to his help. Other villagers including witness Govind Bhallabh ( P.W.9), elder brother of the accused, also reached at the scene of the incident on hearing the hue and cry. The accused was caught at the scene of the incident and the injured Ravindra was immediately taken

to Civil Hospital, Ranikhet for medical aid. He was however referred to Delhi for specialized treatment but succumbed to his injuries on way to Delhi and particularly near the town of Hapur and his dead body was then brought back and kept at Civil Hospital, Ranikhet.

3- The written report, Ext. Ka.1 of the incident was got prepared by the informant Keshav Dutt (P.W.1), the father of the accused and the same was delivered at the Police Station, Bhatrojkhan at 4.45 P.M. On its basis check F.I.R., Ext. Ka.6 was drawn by Head Constable Mohan Chand ( P.W.6) and the case under Section 307 I.P.C. was registered against the accused vide G.D. Report No. 24 of the same date and time, Ext. Ka.7. The accused was handed over to the police at the time of lodging of the report of the incident. The investigation of the case was entrusted to the Station Officer, Bhatrojkhan Sri Anand Singh Gusain ( P.W.7) and since he went out of the station in connection with some official work the investigation was then taken up by S.I. Kamal Kishore Sharma ( P.W.12). He interrogated the accused who was lodged in the Hawalat of the Police Station on 22-8-1999 at 8.25 A.M. Accused made confession and volunteered to have the weapon of assault, the iron axe recovered by disclosing that the same had been concealed by him in a pit near the place of the incident after the occurrence. The Investigating Officer along with other police personnel and public witnesses Bala Dutt alias Bal Kishan (P.W.5) and Govind Ballabh (P.W.9) took the accused to the pointed place and on the instant of the accused recovered the iron axe, material ext. 1 from the pit near the scene of the incident and prepared memo of recovery, Ext. Ka.5. The I.O. thereafter recorded the statement of witness Naveen Chandra and in his presence prepared the site-plan, Ext. Ka.16 of the place of the occurrence and also the place of recovery of the said weapon of assault. He also attached sample of the blood stained and plain earth from there vide memos, Ext. Ka.3 and Ext. Ka.4 respectively.

4- The investigation was thereafter again entrusted to S.I. Anand Singh Gusain. In the meanwhile on 22-8-1999 S.I. Omveer Singh Rawat ( P.W.11) held inquest on the dead body of Ravindra deceased and prepared the inquest report, Ext. Ka.11 and other relevant documents including the challan report, Ext. Ka.13. Packed and

sealed dead body was then sent for post mortem examination which was conducted by Dr. Yogesh Chandra Sharma ( P.W.4) at 1.45 P.M. on 22-8-1999.

5- The steps taken in the investigation by S.I. Anand Singh Gusain ( P.W.7) pertain to recording of the statements of the witnesses and preparation of site-plan, Ext. Ka.8 of the place of recovery of the iron axe, the weapon of assault. Thereafter on 28-8-1999 he submitted an application to the Magistrate concerned to have the statements of the witnesses recorded under Section 164 of the Code of Criminal Procedure. Later on the investigation of the case was entrusted to revenue police in view of the fact that the place of the occurrence falling in the are of the revenue police. Naib Tehsildar Sri Surendra Singh Jangpangi ( P.W.10) who recorded the statements of some of the witnesses including the medical officer and on completion of the investigation charge sheet, Ext. Ka.9 against the accused was placed by him on 2.11.1999.

6- The C.J.M., Nainital took cognizance on the charge sheet against the accused and after completion of the necessary formalities committed the accused to Sessions for trial. In the Sessions Court the accused was charged under Section 302 I.P.C. on 23-6-2000 and he then pleaded not guilty and claimed to be tried.

7- At the trial, prosecution in order to bring home guilt to the accused, relied upon the evidence of twelve witnesses, out of whom, three eye witnesses namely Smt. Deepa Devi (P.W.2), Naveen Chandra (P.W.3) and Keshav Dutt ( P.W.8) narrated the prosecution story and supported the version of the prosecution that accused assaulted the victim Ravindra by wielding iron axe at the time and place as alleged in the case. P.W.1, Keshav Dutt, the informant of the case tried to disown the written report, Ext. Ka.1 but admitted his signatures on it and further that the scribe Amba Dutt Padliya is his neighbour. P.W.5, Bala Dutt alias Bal Kishan and P.W.9 Govind Ballabh, the two public witnesses of the recovery of the iron axe at the instance of the accused tried to help the accused by resiling from their statements as given to the Investigating Officer and have to be declared hostile by the prosecution. P.W.6, Head Constable Mohan Chandra as stated above prepared the check F.I.R. etc of the case. The

evidence of P.W.7, Anand Singh Gusain, P.W.10, Sri S.S. Jangpangi, P.W.11, Omveer Singh Rawat and P.W.12, Kamal Kishore Sharma pertaining to the various formalities of the investigation has already been referred above and their evidence need not be reproduced here again. P.W.4, Dr. Yogesh Chandra Sharma, the Autopsy Surgeon proved that the autopsy on the dead body of Ravindra was held at 1.45 P.M. on 22-8-1999 and autopsy report, Ext. Ka.2 was then prepared. The ante-mortem injuries detected were as under:-

1- Incised wound over right side of scalp semi lunar shape 10cm x 2cm bone deep. There was fracture of parietal bone and deep matter peeped out of the wound.

2- Incised wound 5cm x 1cm x bone deep. Let eye ball evulged out.

On internal examination besides the fracture of parietal bone, brain matter was found peeping out of the injury No.1. There was bleeding from the nose. In his opinion the death was caused about one day ago due to shock and haemorrhage as a result of ante-mortem injuries. He also probablised the time of the sustaining of ante-mortem injuries as about 2 P.M. on 21-8-1999 by blows of iron axe and which were sufficient to cause death in the ordinary course of nature.

8- No evidence was adduced in defence.

9- The trial court on appreciation of the evidence on record and particular on the basis of direct evidence of the eye witnesses and arrest of the accused on the spot accepted the prosecution case that accused assaulted his son Ravindra at the time and place as alleged with intention to commit the murder of the victim who later on succumbed to the injuries sustained at the hands of the accused and the accused was therefore held guilty, convicted and sentenced as stated above.

10- Learned Amicus Curiae appearing on behalf of the accused tried to assail the findings of the trial court by submitting that the evidence on interested mother and brother namely Smt. Deepa Devi (P.W.2) and Naveen Chandra (P.W.3) was not sufficient to prove the role assigned to the accused without corroboration from the independent evidence and particularly when the evidence of so called

independent witness Keshav Dutt ( P.W.8) was highly shaky and discrepant and who was not expected to be there at the scene of the incident when the alleged occurrence took place. Learned counsel also submitted that the evidence in regard to the recovery of the axe at the instance of the accused should not have been acted upon in the face of both the public witnesses P.W.5, Bala Dutt alias Bal Kishan and P.W.9, Govind Ballabh having been declared hostile on account of their not giving evidence to support the prosecution version in that regard. It was then submitted that there was also no motive for the accused to commit the murder of his own son and that the accused was falsely implicated in the case at the instance of his wife who was not having cordial relations with her husband. As against this, learned A.G.A. supported the findings of the trial court by submitting that the occurrence took place during board day light and there was credible and reliable direct evidence consisting of the testimony of the three eye witnesses coupled with the recovery of the weapon of assault on the disclosure statement of the accused himself. He also submitted that the evidence of the prosecution was properly appraised and scrutinized by the trial court and the appeal being without merit deserve to be dismissed. In this backdrop we have to consider whether the evidence of the prosecution is sufficient and prove beyond doubt that the victim Ravindra was assaulted by his father, the accused at the time and place as alleged by the prosecution and that the accused made and assault with intention to commit his murder.

11- As is evident from the cross-examination of the three witnesses of the fact the defence did not dispute that the death of Ravindra was homicidal. In regard to the time and place of the assault also no dispute was raised as not a single suggestion was put to the witnesses to register the stand that either the time of the occurrence was changed or the place of the incident was shifted by the prosecution to show the presence of the eye witnesses there at the time of the occurrence. In short the evidence of all the three eye witnesses namely Smt. Deepa Devi, Naveen Chanra and Keshav Dutt prove beyond doubt the occurrence of assault on the said victim took place at about 2 P.M. near Richi Primary School at the distance of about one kilometer from

the village Abadi as was also shown in the site-plan, Ext. Ka.16 within the circle of P.S. Bhatrojkhan, District Almora.

12- In regard to the incident of actual assault on the person of victim Ravinder we have the evidence of three eye witnesses named above. Their evidence is to the effect that P.W.2, Smt. Deepa Devi was cutting grass near the place of the occurrence and whereas her two minor sons victim Ravindra aged about 13 years and P.W.2, Naveen Chandra, aged about 15 years were keeping watch on their cows then grazing grass at that place and P.W.8, Keshav Dutt, aged about 15 years was playing with these two other boys at that place. According to P.W.3 and P.W.8 accused came at that place at about 2 P.M. then carrying an iron axe and told that he will narrate a story to Ravindra. The accused then gave axe blows on the head of his son Ravindra who sustained injuries and fell then and there. Since P.W.2, Smt. Deepa Devi was also there while collecting grass she also gave out that she had seen the accused coming there with an iron axe and thereafter the accused gave axe blows on the head of her younger son Ravindra. On alarm being raised Govind Ballabh ( P.W.9) the brother of the accused and other villagers also reached there and injured Ravindra was then taken from there to the hospital for giving him medical aid. P.W.3, Naveen Chandra also categorically stated that his mother also came there when his father was assaulting his brother by wielding the iron axe. The other witness Keshav Dutt, however stated that the mother of the victim was not there at the spot of actual assault but was then cutting grass at a short distance from there. Since witness Smt. Deepa Devi went there to collect grass and her two sons were then keeping watch on the grazing cows their presence at the scene of the incident can not at all be doubted and more so when at that place one of the son Ravindra got to be assaulted by the accused in above manner. Keshav Dutt a village boy claimed that he was at that time playing with these two boys. This establish his presence at the scene of the incident when assault was made and therefore all these three eye witnesses can safely be said to be most probable and natural witnesses of the occurrence. All these witnesses by their evidence have corroborated in essential particulars the prosecution version and further the arrival of the other villagers at the spot

including Govind Ballabh (P.W.9) to facilitate the arrest of the accused near the scene of the incident and that was the reason that he was handed over to the police when the report of the incident was lodged. Entry of the G.D. Report No. 24 of 16.45 hours, Ext. Ka.11, prove that the accused was handed over to the police at that time and was then taken in proper police custody and kept in the Hawalat.

13- Learned Amicus Curiae appearing on behalf of the accused submitted that the evidence of P.W.2, Smt. Deepa Devi indicate that before the incident everything was normal and according to her all the family members took noon meal together in the house and in a situation like this it does not stand to reason that thereafter the accused who put to such a frame of mind as to assault his minor son in the manner as alleged by the witnesses and that in the totality of the circumstances of the case the evidence of these eye witnesses about the role assigned to the accused does not appear credible and reasonable. It is well settled that court has to judge the evidence in a criminal case by the yard stick of probabilities and its intrinsic worth. In this case the direct evidence about the role assigned to the accused has been given by none other than the wife and the minor son of the accused who were witnesses to the incident of assault and also corroborated by the evidence of a village boy all of whom have no such animus as may impel them of falsely implicate the accused by assigning him the role of an author of the injuries of victim Ravindra and which ultimately proved fatal for him. The way the assault was made by the accused on reaching there at the scene of the incident with an iron axe clearly given an indication that it was premeditated with intention to eliminate the minor son for reasons best known to the accused himself and which in the peculiar circumstance of the case are very difficult to be explored on a logical basis. As is well settled the human nature not always being certain and being varying on account of different mental conditions a rational answers to every act is therefore hardly possible. In the given circumstances, therefore, the categorical statement of Smt. Deepa Devi that at the time of the incident her husband accused was retorting that victim Ravindra was bound to die at his hands and the victim was thus assaulted by him can be taken to explain to a large extent that the accused had made up his

mind for some impelling reason to act in such a brutal manner against his own minor son. Having reviewed the evidence in this background we see no substance in the argument of the learned Amicus Curiae as may force us to discard the otherwise cogent, credible and clear evidence of all these three witnesses and which in fact prove beyond doubt that none other than the accused made assault on victim Ravindra by wielding iron axe resulting which Ravindra sustained serious injuries on the head and later on succumbed to the injuries.

14- Another attempt was also made to made a dent in the prosecution version and evidence of these eye witnesses by the learned Amicus Curiae by referring to the statement of P.W.8, Keshav Dutt who stated in cross-examination that mother of the deceased arrived at the scene of the occurrence after about half an hour of the assault and that he was not aware as to who had summoned her to that place as he had run away from the scene of occurrence immediately after the assault made by the accused on the victim and submitted that in view of this evidence the presence of Smt. Deepa Devi at the scene of the occurrence becomes highly doubtful. We see no merit in this argument because the witness Keshav Dutt had run away from the scene of the occurrence soon after the actual assault and had not returned thereafter to that place and in a situation like this he could not have known that the mother of the victim reached there after half an hour of the occurrence. It appear that due to some confusion this statement was given by the witness because earlier in the examination-in-chief he has categorically stated that the mother of the victim was cutting grass at the time of the incident at a short distance from the actual place of the assault. When this was the situation Smt. Deepa Devi was expected to have seen the actual assault being made by the accused on her son Ravindra and merely on account of the confusing statement given by the witness Keshav Dutt her evidence can not safely be disbelieved.

15- Attention was also drawn to the fact the name of witness Keshav Dutt does not find place in the written report, Ext. Ka.1 and it was submitted that on this account the witness has to be held to be a got up witness and his evidence could not have been taken to corroborate the evidence of P.W.2 and P.W.3. To support this

argument reference was also made to the evidence of P.W.2 who did not name witness Keshav Dutt being present there at the scene of the occurrence at the time of the assault by the accused. We see no force in these submissions also because the law does not require that name of every witness should be mentioned in the F.I.R. Moreover his evidence is clear and cogent and his cross-examination did not result in surfacing anything material as may indicate that he was a got up witness and had not seen the assault made by the accused on the victim. Further it is in the evidence of P.W.2, Smt. Deepa Devi that besides her own cows other cattel were also grazing grass in the field at the place of the occurrence and this aspect guarantee presence of person other than her two sons to keep watch on the cattle then grazing grass at that place. If she could not tell the name of the person to whom the other cattle belonged it would not indicate that there was no fourth person present at the scene of the incident at the time of the actual assault. We are convinced that the other person then present at the scene of the incident was witness Keshav Dutt who by his definite and reliable evidence affirmed his presence and also supported the prosecution version about the assault made by the accused on the victim of the case. Therefore, the evidence of witness Keshav Dutt also being trustworthy it corroborate the evidence of other two eye witnesses Smt. Deepa Devi and her son Naveen Chandra. In short the evidence of all the three witnesses being credible and reliable prove beyond doubt that accused Shekhar Chandra assaulted his son by wielding iron axe at the time and place as alleged by the prosecution.

16. According to the prosecution weapon of assault, iron axe, Ext.1 was recovered at the instance of accused on 22-8-1999. The evidence to this effect was given by P.W.12, Kamal Kishore Sharma, who also proved that accused on interrogation gave information that the said weapon of assault was concealed by him in a pit near the place of the occurrence and that on the accused being taken there the said article was recovered in the presence of witnesses including Bala Dutt alias Bal Kishan (P.W.5) and Govind Ballabh (P.W.9) and memo of recover, Ext. Ka.5 was then prepared. The accused was interrogated by this witness when the accused was in custody of the police as he had already been handed over to the police after arrest from the spot

and was kept in the Hawalat of the police station. The evidence of the witness unerringly establish that the fact discovered was the place from which the said article, iron axe, was produced by the accused who had concealed it there in confirmation of the information given by him during the interrogation and therefore the recovery of this article was the one as contemplated under Section 27 of the Indian Evidence Act, 1872. The cross-examination of this witness seem to have not brought anything on record which may indicate that the axe was not so recovered at the instance of the accused.

17- Learned Amicus Curiae referred to the statement of the public witnesses both of whom were declared hostile and argued that the interested testimony of the I.O. was not sufficient to prove the recovery as envisaged by law. The statement of Investigating Officer is legally required to be place on the same footing as the evidence of other independent witness of recovery and the only precaution required in placing reliance on the evidence is that the evidence of such a witness should be scrutinized carefully. As stated above on scrutiny with case and caution the evidence of this witness appeared trustworthy and that was the reason that his evidence was held sufficient to prove the recovery as envisaged under law. It is of significance that though P.W.5, Bala Dutt alias Bal Kishan turned hostile but he admitted that the recovery memo, Ext. Ka.5 was prepared at the spot, it was read over to him and that thereafter it was signed by him in the presence of others. In a situation like this it is evidence that he merely made an attempt to help his nephew, the accused, by saying that he cannot say as to whether or not the iron axe was got recovered from the place of the recovery by the accused. Since the evidence of a hostile witness do not stand washed off the record his admission about the propriety of the preparation of the memo of recovery and his half hearted attempt to dispute the factum of recovery at the instance of the accused can not safely be taken to corrode the evidence of Investigating Officer Kamal Kishore Sharma (P.W.12) on this aspect of the prosecution case. The evidence of other public witness Govind Ballabh ( P.W.9) is, however, in total denial of the factum of the recovery which, in any case, cannot be taken to have any telling effect on this aspect of the case and we feel it safe to agree

with the finding of the trial court that the weapon of assault, iron axe, was recovered at the instance of the accused.

18- Prosecution tendered in evidence the report of the Forensic Lab, Ext. Ka.10 which reveal that on the iron axe, Ext. 1 blood was found but it got disintegrated as a result of which the origin of the blood could not be affirmed. Referring to this it was argued that absence of proof of blood of the deceased on this article falsify the claim of the prosecution. We see no merit in this argument because if the blood got disintegrated the positive evidence of the recovery of the article could not be viewed with any amount of suspicion, more so when the medical evidence of the autopsy surgeon referred above prove that the ante-mortem injuries of the deceased were probably caused by the blow of the iron axe. In short the report of Forensic Lab would not have any adverse effect on the reliable of the prosecution evidence discussed above.

19- P.W.1, Keshav Dutt, the informant of the case, is the father of the accused. Written report, Ext. Ka.1 was delivered by him at the police station. He however turned hostile by stating that he was made to made his signatures on a paper having some writing on it and which was not read over to him. He admitted his signatures on written report, Ext. Ka.1 and claimed that he came to know that his grandson (Ravindra) was assaulted by some one from where his grandson was taken to the hospital and the identity of the assailant was not then known. It appear that due to close relationship and natural having sympathy with his son he turned hostile but did not have the courage to deny his signatures on the written report. An attempt was made to get some benefit out of his peculiar feature of the case but in our view mere resiling of the witness from his earlier stand would not any bearing on the credible ocular evidence of the witnesses which unerringly establish involvement of the accused in the commission of the crime.

20- Learned Amicus Curiae then drew attention to the statement of P.W.2 Smt. Deepa Devi who gave out that her husband (accused) was addicted to intoxicants and thinking that her husband was mentally sick he was sent to Bareilly mental hospital for medical treatment for a period of 5 or 6 days and argued that if the accused on account of a

state of unsound mind made an assault on his own son he was protected by the legal provision of Section 84 of the Indian Penal Code. In support to the submission reference was also made to the statement of accused under Section 313 Cr.P.C. in which he claimed that about two years ago ( at the relevant time of the occurrence) he was mentally sick and was thus treated privately at mental hospital, Bareilly. In this regard we feel it desirable to refer to the evidence of P.W.5, Bala Dutt alias Bal Kishan, the uncle of the accused, who gave out that 8 or 10 months before the occurrence the accused was taken to Bareilly mental hospital but was not admitted there for treatment because the accused was all-right and was thus given medicine for two to four days by a private doctor. The cumulative effect of the evidence in this regard admit of only one inference, that is, that the claim about the mental illness of the accused is not proved at all by the oral evidence nor there is documentary evidence to show that the accused was of unsound mind for some time, before the occurrence. If on account of addiction of intoxicants he was given some treatment it could not be taken that he was a person of unsound mind and may have acted in the above manner to assault his son without knowing its consequences. Therefore, the case of the accused cannot fall under the general exception as provided by Section 84 of the Indian Penal Code and it has to be held that the accused was a man of perfect sound mind at the time of the occurrence and knew it very well as to what he was doing while making assault on his own son by wielding an iron axe and causing serious injuries which proved fatal for the victim.

21- Upon consideration of the evidence on record and discussion made above we come to the a definite conclusion that the evidence of the prosecution prove beyond doubt that the accused assaulted his minor son Ravindra by wielding iron axe and caused him serious injuries at about 2 P.M. on 21-8-1999 near Richi Primary School within the circle of P.S. Bhatrojkhan, District Almora. The accused had given two blows of the axe, a sharp cutting object, on the head a vital part of the body of the victim with the intention of causing bodily injury sufficient in the ordinary course of nature to cause the death and therefore the case squarely fall under clause thirdly of Section 300 I.P.C. and the offence of murder punishable under Section 302

I.P.C. was established beyond doubt against the accused. He was, therefore, rightly held guilty and convicted for the murder of his own son by the trial court. There being no merit in this appeal, the same is therefore liable to be dismissed.

22- The appeal fails and is hereby dismissed. The judgment dated 6-10-2001 convicting and sentencing the accused to imprisonment for life and fine of Rs. 10,000/- and in default of payment of fine to further undergo R.I. for one year under Section 302 I.P.C. is confirmed. The accused Shekhar Chandra is in jail. He shall suffer the sentence awarded against him.

23- Let the record be sent back to the court concerned.

**( B.S. Verma, J.)** **( Irshad Hussain, J.)**

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